

BEFORE THE DEPARTMENT OF LABOR  
160 N. LASALLE ST., STE. C-1300  
CHICAGO, ILLINOIS 60601

IN THE CONSOLIDATED MATTER OF: )

STANLEY SIMRAYH, as MEMBER OF THE )  
INTERNATIONAL UNION OF OPERATING )  
ENGINEERS, LOCAL #150 and the )  
INTERNATIONAL UNION OF OPERATING )  
ENGINEERS, LOCAL #150, and the )  
ASSOCIATED GENERAL CONTRACTORS OF )  
ILLINOIS, SOUTHERN ILLINOIS BUILDERS )  
ASSOCIATION, AMERICAN COUNSEL OF )  
ENGINEERING COMPANIES, DIAMOND )  
CONSTRUCTION CO., UNITED CONTRACTORS )  
OF MIDWEST, INC., ADVANCED ASPHALT )  
COMPANY, E.T. SIMONDS, TARLTON CORP. )  
BUSH CONSTRUCTION CO., INC., FOLEY )  
CONSTRUCTION CO., SOUTHERN ILLINOIS )  
ASPHALT CO., INC. KLINGNER & ASSOC., )  
P.C. ANDREWS ENGINEERING GROUP, )  
L.L.C., SCI ENGINEERING, INC., AND JUNEAU )  
ASSOCIATES INC., P.C. )

Petitioner(s), )

v. )

JOSEPH COSTIGAN, DIRECTOR OF )  
LABOR and the ILLINOIS DEPARTMENT OF )  
LABOR, )

Respondent, )

LABORERS' INTERNATIONAL UNION OF NORTH )  
AMERICA, GREAT PLAINS LABORERS' DISTRICT )  
COUNCIL and their affiliated local unions "GREAT )  
PLAINS LABORERS", MARTIN FLANAGAN, as a )  
MEMBER of the INTERNATIONAL UNION OF NORTH )  
AMERICA, CONSTRUCTION & GENERAL LABORERS' )  
DISTRICT COUNCIL OF CHICAGO & VICINITY, and the )  
LABORERS' DISTRICT COUNCIL LABOR )  
MANAGEMENT COOPERATION COMMITTEE "LDC" )

Interveners.

STATE FILE NO.: 15-H-JN08-0852

ORDER

**THIS MATTER COMING** on to be heard under the Prevailing Wage Act, 820 ILCS 130/0.01-12 and Notice of Hearing issued there and pursuant to a prehearing conference wherein, the IUOE filed an Objection to the Contractor's Written Notice of Objections, and, the Laborers' International Union of North American Great Plains Laborers' District Counsel et. al ("Great Plains Laborers'), and Laborers International Union of North American, Construction & General Laborers' District Council of Chicago & Vicinity and the Laborers' District Council Labor Management Cooperation Committee ("LDC") Motion to Reconsider and Petition to Intervene, all parties having been duly advised on the premises;

The Prevailing Wage Act provides for a Section 9 hearing “[a]t any time within 30 days after the Department of Labor has published on its official web site a prevailing wage schedule, any person affected thereby may object in writing to the determination or such part thereof as they may deem objectionable by filing a written notice with the public body or Department of Labor, whichever has made such determination, stating the specified grounds of the objection.” 820 ILCS 130/9. Other than a time limitation the law provides no restriction as to which classifications may be challenged by an “affected person”.

The Operators argue that a consent decree emanating from a Section 9 hearing entered in 2006 by IDOL regarding Boone, Carroll, Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake Lee, McHenry, Ogle, Will and Winnebago Counties, Illinois (hereinafter referred to as “Boone”) establishing Material Tester I and Material Tester II classifications, restricts the Contractors from requesting a Section 9 hearing concerning the classification and wage rate for Material Tester(s) I and II in those counties. IUOE represents that the hearing should only cover the remaining counties for which IDOL published the rate, namely Jo Daviess, Stephenson, Henry (west), Mercer, Livingston, Whiteside, Rock Island, Bureau, Putnam and LaSalle counties (hereinafter referred to as “Jo Daviess”).

The Laborers and Great Plains Laborers support IUOE’s position arguing that a settlement agreement in State File No. 2014-H-TW07-0013 were limited to Jo Daviess’ counties and that pursuant to the settlement agreement, the Contractors have no legal basis to expand their objection beyond the Jo Daviess’ counties. Thus, the Laborers argue, the Contractors have limited their objection to only those counties for which the title is published. The classifications and rates maintaining that no 2013 or 2014 prevailing wage schedule in any Illinois county outside of the original Boone counties has ever published or otherwise addressed a material tester/inspector classification.

The Contractors argue that they timely filed objections (pursuant to the undersigned’s order as well as a court order emanating from a separate action in Cook County) requesting a hearing as to *all* counties in which the Material Tester I and II classification is published in the State of Illinois. The Contractors further maintain that the August 20, 2014 originally filed Notice of Objection(s) challenged “Prevailing Wage determinations for the classifications material tester/inspector I and material testers/inspector II in all counties of Illinois for which they are published.” *Written Notice of Objections to Prevailing Wage Determinations of Material Tester/Inspector I and Material Testers/Inspector II Classifications, AGCI, August 20, 2014 (“Contractor Objections”)*. As such, the Contractors maintain they are clearly entitled to a hearing on Objections as to all 24 counties for which the classifications are/were published.

The undersigned previously determined that a hearing would go forward on a bifurcated basis having determined that the first issue to be decided at hearing is whether a classification should exist. Upon a finding that one should exist a hearing would resume and evidence would then be allowed and limited to the proper rate of pay for that classification. On September 14, 2014, the undersigned ruled in regarding bifurcation of the hearing.

The issues in this matter are bifurcated to determine first whether a classification should exist in all counties in the State of Illinois and in all counties where the classification is published. Local #150’s Objection to AGCI’s challenge being untimely is overruled given court order arising out of 2013CH26840. Should a classification be proper, the second portion of the hearing will establish the proper rate of pay for that classification.

*Order, September 14, 2014.*

In reviewing the Notice of Objection filed by the Contractors they in fact object to any and all material tester classifications in Illinois counties *in which they are published* (emphasis added). Rates were published for 24 counties, whether as a result of a section 9 hearing, court order or consent decree. Therefore, the scope of the hearing will include all 24 counties. To the extent a finding may be made that there is no basis for a material tester(s) I and II category to exist, said finding will necessarily affect the entire State of Illinois.

#### **IT IS HEREBY ORDERED:**

1. Laborers’ International Union of North America, Great Plains Laborers’ District Council’s and their affiliated local unions “GREAT PLAINS LABORERS” Motion to Reconsider is granted. The Great Plains Laborers’ are allowed to intervene.
2. Martin Flanagan, as a member of the International Union of North America, Construction & General Laborers’ District Council of Chicago & Vicinity, and the Laborers’ District Council Labor Management Cooperation Committee “LDC” Petition to Intervene is granted.

3. The caption is amended to reflect Intervener status.
4. Brown, Hay and Stephens Motion to Withdraw as counsel for the Great Plains Laborers is granted. Hogan and Marren are granted leave to substitute as counsel for Great Plains Laborers.
5. Based upon the statute, the hearing remains bifurcated and the issues will be limited to whether the material tester(s) I and II classification should exist in all counties in which the title is published in the State of Illinois regardless of how the classification(s) became recognized.
6. If the decision results in non recognition of the Material Tester I and II classifications in this hearing, any finding may necessarily affect the entire State of Illinois. Expansion of the title to Jo Daviess' counties will also be heard and are within the scope of this hearing. Should a finding be made that the classification should be recognized in the 24 counties at issue, the rates and classification will be established, if proper, only as to those 24 counties or counties for which the evidence deems recognition. In addition, the scope of the hearing will include whether the classification and rates should be expanded to the Boone counties, separately or as a whole.

DATE: 10/14/14

/s/ Claudia D. Manley

Claudia D. Manley  
Chief Administrative Law Judge

Claudia D. Manley  
Chief Administrative Law Judge  
Illinois Department of Labor  
160 N. LaSalle St., Ste. C-1300  
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CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing:

Order  
prior to 4:30 p.m. on October 20, 2014, to the following addresses shown below  
via email, U.S. Mail, and placed on the Illinois Department of Labor's official  
website at <http://www.illinois.gov/idol/Laws-Rules/legal/Pages/Hearings.aspx>:

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